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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1095 (Sub-No. 2X)]

SMS Rail Service, Inc.—Abandonment Exemption—in Gloucester County, N.J.

SMS Rail Service, Inc. (SMS), has filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon approximately 5.8 miles of rail line (the Line) within the 970-acre refinery owned by Paulsboro Refining Company, LLC (PRC), in Paulsboro, Gloucester County, N.J.¹ The Line traverses United States Postal Service Zip Code 08066.

SMS has certified that: (1) no overhead traffic has moved over the Line for at least two years and overhead traffic, if there were any, could be rerouted over other lines; (2) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (3) the requirements at 49 C.F.R. § 1105.7(c) (environmental report), 49 C.F.R.

¹ The Line is the same line as to which the Board granted PRC's application for adverse abandonment against SMS in December 2014. See Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J., AB 1095 (Sub-No. 1) (STB served Dec. 2, 2014). That decision later was vacated at the parties' joint request due to settlement. Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J., AB 1095 (Sub-No. 1) (STB served June 19, 2015).

§ 1105.11 (transmittal letter), 49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to governmental agencies) have been met.²

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. § 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 10, 2017, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2),⁴ and

² To qualify for the two-year out-of-service class exemption, a carrier must also certify that “no local traffic has moved over the line for at least 2 years,” 49 C.F.R. § 1152.50(b). Here, SMS certifies that “no rail traffic has been transported by SMS over [the Line] . . . for at least two years.” (Notice, App. 1 at 1 (emphasis added).) In light of the unique circumstances of this case (including, among other things, the recent adverse abandonment proceeding pertaining to the Line), the Board has waived § 1152.50(b) to the extent, if any, that SMS’s certification could be deemed not to meet the requirement of that regulation. SMS Rail Serv., Inc.—Aban. Exemption—in Gloucester Cty., N.J. (July Decision), AB 1095 (Sub-No. 2X), slip op. at 1 (STB served July 13, 2017).

³ The Board will grant a stay if an informed decision on any environmental issues raised cannot be made before the exemption’s effective date. See Exemption of Out-of-Serv. Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption’s effective date.

⁴ Each OFA must be accompanied by the filing fee, which is currently set at \$1,700. See 49 C.F.R. § 1002.2(f)(25). Effective September 1, 2017, the fee will

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interim trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by August 21, 2017. Petitions to reopen or requests for public use conditions under 49 C.F.R. § 1152.28 must be filed by August 31, 2017, with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to Robert A. Klein, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Combined environmental and historic reports that addressed the effects, if any, of abandonment of the Line on the environment and historic resources were prepared and submitted to the Board as part of PRC's adverse abandonment application for the Line in Docket No. AB 1095 (Sub-No. 1). The Board's Office of Environmental Analysis (OEA) issued an Environmental Assessment (EA) in that proceeding on February 12, 2014, concluding that the proposed abandonment would not significantly impact the quality of the human environment and recommending no environmental mitigation conditions. Following the public comment period, OEA issued a final EA in which it recommended no environmental mitigation conditions. In its decision granting PRC's

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become \$1,800. See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2017 Update, EP 542 (Sub-No. 25), slip op. App. C at 20 (STB served July 28, 2017).

adverse abandonment application, the Board adopted OEA's analysis and found that the proposed abandonment, if implemented, would not significantly affect the quality of the human environment and that no environmental conditions were needed. See Paulsboro Refining Co.—Adverse Aban.—in Gloucester Cty., N.J., AB 1095 (Sub-No. 1), slip op. at 6 (STB served Dec. 2, 2014). In the July Decision, the Board found that the environmental review conducted in Docket No. AB 1095 (Sub-No. 1) satisfies the agency's obligations under the National Environmental Policy Act, 42 U.S.C. § 4321, and the National Historic Preservation Act, 54 U.S.C. § 300101 et seq., in this case and therefore waived the environmental and historic reporting requirements under 49 C.F.R. §§ 1105.7 and 1105.8 for this proceeding.

Public use or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), SMS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by SMS's filing of a notice of consummation by August 13, 2017, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.GOV."

Decided: August 8, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.